Supreme Court, U.S.
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No. 98-125

In The

Supreme Court of the United States

October Term, 1997

JODI GOODWIN, Individually and as next friend of BETTY JO GOODWIN, a minor,

Petitioner,

v.

RANDY HALL,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Wyoming

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Jodi Goodwin and her daughter, Betty Jo Goodwin, are Wyoming residents. Randy Hall, Betty Jo's natural father, abandoned her for the first five years of her life and was a legal stranger to her. Hall seized custody of Betty Jo in Idaho and filed false court documents to permanently remove her from Wyoming. After prevailing in the Idaho custody proceeding, Jodi and Betty Jo Goodwin filed suit against Hall in Wyoming. They alleged that Hall's actions in Idaho had caused important consequences in Wyoming. For a period of several months, he deprived a Wyoming resident of her state citizenship and deprived a Wyoming mother of her child.

The trial court dismissed the suit, despite an express decision that Hall's "actions had ***definite consequences in Wyoming***" and that "Wyoming certainly has a ***significant interest*** in providing a forum." [App. 15-16, emphasis supplied]. The trial court and the Wyoming Supreme Court in effect disregarded foreseeable consequences of personal torts, and held that *in personam* jurisdiction is found only in the state that has the strongest interest in the controversy.

The issue deserving of certiorari relates to the standard of *in personam* jurisdiction applied to the personal conduct and private torts of natural persons. The question presented here is:

> With regard to *in personam* jurisdiction, do a mother and child deserve the same level of legal dignity accorded to commercial interests?

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PETITION FOR WRIT OF CERTIORARI

Jodi Goodwin, individually and as next friend of Betty Jo Goodwin, her minor child, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Wyoming Supreme Court entered in this proceeding on April 15, 1998. Petitioners' claims put at issue their due process rights and state citizenship status guaranteed to them by the Constitution of the United States. By issuance of the writ this Court would resolve the conflicts that have arisen in applying constitutional standards of *in personam* jurisdiction to commercial matters in contrast to personal torts that concern, and are committed against, children.

OPINIONS BELOW

The opinion of the Wyoming Supreme Court that gives rise to this petition was published in the advanced sheets in case No. 97-214, ___ P.2d ___ (Wyo.1998). The opinion is reprinted in Appendix A hereto at page App. 1.

The trial court's Order Granting Defendant's Motion to Dismiss, was entered by the Second Judicial District Court for Albany County, Wyoming, on June 23, 1997, in Civil Action No. 25868. The unpublished Order is reprinted at page App. 9. The said Order incorporates by reference the court's Decision Letter entered on June 12, 1997, reprinted at page App. 11.

JURISDICTION

On June 23, 1997, the Second Judicial District Court for Albany County, Wyoming, dismissed the Complaint of Jodi Goodwin ["Jodi"] and her daughter, Betty Jo Goodwin ["Betty Jo"], citizens of Wyoming, against Randy Hall ["Hall"], a citizen of Idaho, on the grounds that the Wyoming Court lacked *in personam* jurisdiction over Hall. Appeal to the Wyoming Supreme Court was timely filed.

In an opinion issued on April 15, 1998, the Wyoming Supreme Court upheld the Second Judicial District Court for Albany County, Wyoming, affirming the decision on the grounds that the Wyoming courts lacked *in personam* jurisdiction over Hall.

Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the Wyoming Supreme Court decision.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257.

STATUTES INVOLVED IN THIS CASE

The Wyoming long-arm statute, Section 5-1-107(a), Wyoming Statutes (1997 Ed.) provides:

> A Wyoming Court may exercise jurisdiction on any basis not inconsistent with the Wyoming or United States Constitution.

The Fourteenth Amendment to the United States Constitution provides in part:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a case filed by a Wyoming mother and daughter for tortious conduct by Hall in Idaho, alleging that Hall knowingly and intentionally caused the important consequence of affecting their status and rights in Wyoming.

The case is *not* a child custody dispute. It is a claim on torts committed by a man who at the time of his acts had no legal rights whatever with respect to the child. Claiming to be the child's father, he abused process and intentionally interfered with the mother-child relationship of Wyoming residents. In effect, he misused legal process in one state to steal a child from another state. By his conduct in Idaho he forced a Wyoming resident to travel to Idaho and defend her daughter's right to her freedom and Wyoming citizenship.

The Wyoming District Court dismissed the Complaint, holding that Wyoming lacked personal jurisdiction over the Idaho tortfeasor, Hall. The District Court expressly stated:

> That **his action had significant consequences on Plaintiff in Wyoming** cannot be denied and must, in fact, be assumed as true for purposes of this motion.
>
> * * *
>
> Again, his actions had **definite consequences in Wyoming** . . .

App. 15 [emphasis supplied].

> **Wyoming certainly has a significant interest** in providing a forum for its residents, particularly when actions such as [Hall's] may have the effect of removing youthful parties from the boundaries of the state.

App. 16 [emphasis supplied].

The District Court then applied a balancing test of the sort that would be utilized in an inter-state child custody dispute under the Uniform Child Custody Jurisdiction Act (UCCJA) adopted in all fifty states. After comparing the interests of the two states, the District Court below concluded that Idaho's interests in the dispute outweighed the interests of Wyoming. The court then concluded, in effect, that because Idaho was a proper forum Wyoming somehow was deprived of *in personam* jurisdiction.

REASONS FOR GRANTING THE WRIT

I. This Court should resolve the double standard that has developed whereby the test for *in personam* jurisdiction applies to commercial litigants, but not natural persons.

After much uncertainty in the aftermath of *International Shoe Co. v. Washington,* this Court appears to have reduced the law of *in personam* jurisdiction to a two-step test: (1) purposeful contacts and (2) the overall fairness of the exercise of jurisdiction. *World-Wide Volkswagen v. Woodson,* 444 U.S. 286 (1980); *Burger King v. Rudzewicz,* 471 U.S. 462 (1985). Great complication and contentiousness remain over how the standard is applied. This Court has refined the rules, but has not removed any of the conflict that informs the discussion. In *Asahi Metal Industry Co. Ltd. v. Superior Court,* 480 U.S. 102 (1987), eight justices agreed on the application of the fairness step of the analysis with regard to a personal injury products liability claim against a Taiwanese manufacturer of a motorcycle tire tube. In three separate opinions, with no majority, the Court evaluated actions which cause effects in the forum, and the stream of commerce considerations often applied to product liability cases, to arrive at dramatic and unyielding disagreement. Four justices staked out a rigid position on each side of the argument. Expansive scholarly commentary has been inconclusive.

In *Asahi,* four justices grafted a strict requirement onto minimum contacts analysis, requiring that a defendant's act must be "purposefully directed" at the forum. Merely placing a product into the stream of commerce

would not be enough to sustain jurisdiction, regardless of whether it was foreseeable that the product would reach the forum state. *Asahi,* 480 U.S. at pp. 109-112.

Four other justices reached an opposite result, holding that placing a product into commerce is enough to confer jurisdiction if the defendant was aware that the "regular and anticipated flow of products" would result in the marketing of the product in the forum state. *Asahi,* 480 U.S. at pp. 116-121.

This Court has not clearly resolved the situation applicable to commercial interests, and has not addressed the application of the *in personam* standard to personal, in contrast to commercial, rights and consequences.

As the standard has been applied across the country, if a commercial party has purposefully directed activities at residents of the forum, and if the litigation results from those activities, jurisdiction is found to be proper.

Certiorari is appropriate to establish that a mother and child in the stream of life are entitled to at least the dignity of a product in the stream of commerce. If they are not, then certiorari is appropriate to establish that reality.

II. In the realm of personal torts, the courts have reverted to standards of minimum contacts and have applied an improper balancing test.

The Wyoming Supreme Court and the trial court have misapplied the threshold "purposeful availment" standard to mean that the privilege of acting in a state is

effectively no different than the "minimum contacts" test of *International Shoe*. As the sole requirement for jurisdiction, that standard has long since been rejected by this Court. The courts below articulated the "purposeful availment" test in the disjunctive: that "the defendant must purposefully avail himself of the privilege of acting in the forum state **or** of causing important consequences in that state." [App. 8.] The "privilege of acting" in the state was then made into a separate, absolute requirement, thereby defeating the effect of this Court's rulings.

The Wyoming Supreme Court and the trial court also applied a balancing test, holding that Idaho had stronger interests than did Wyoming. Such a holding is directly contrary to this Court's decisions. *See, e.g., Keeton v. Hustler Magazine*, 465 U.S. 770 (1984), in which plaintiff Keeton herself had almost no connection to the New Hampshire forum and was not a resident there, but jurisdiction was held to be proper in New Hampshire on the basis of the consequences of the defendant's acts in the forum state. That holding and others consistent with it have been entirely disregarded by the Wyoming courts in balancing the interests of the two states. In *Keeton*, many other states had a far greater interest in the controversy than did New Hampshire, but that fact did not deprive New Hampshire of jurisdiction. The whisper-thin New Hampshire state interests in *Keeton* pale beside the Wyoming interests here. *As a state interest to sustain personal jurisdiction* the sensitivity to truth in the tender hearts of Hustler Magazine readers could not possibly reach the level of significance of Wyoming's interest in protecting its own citizens against child stealing and interference

with the parent-child relationship by a non-resident legal stranger.

Applying a balancing test, the Wyoming courts concluded that a state with a greater interest in a controversy somehow deprives all other states of *in personam* jurisdiction. Such a balancing of interests, and such a deprivation of jurisdiction, is contrary to the constitutional principles that this Court has labored so mightily to articulate.

Certiorari is appropriate to prevent continued misapplication of constitutional standards for *in personam* jurisdiction.

III. Human beings deserve the legal dignity accorded to commercial vendors.

The courts of this country have struggled to apply the standards of *in personam* jurisdiction to an increasingly fluid commercial world, with declining regard for state boundaries. *See, e.g., Inset Systems, Inc., v. Instruction Set, Inc.*, 937 F.Supp. 161 (D.Conn.1996), addressing jurisdictional issues in the world of internet communications, specifically the consequences in the forum state of a non-resident's conduct in cyberspace. This Court should recognize that the citizens of this country, in their personal lives, are no less mobile and have no less disregarded geographic distinctions. Libel cases such as *Keeton, supra,* and *Calder v. Jones*, 465 U.S. 783 (1984) (damage to reputation in the forum state by a non-resident's intentional conduct elsewhere) illustrate application of the personal jurisdiction standard to commercial litigants, even where the claims relate to personal damages.

This Court should grant certiorari to insure that the evolution of judicial doctrine relating to increasingly complex commercial relationships does not diminish the dignity of human beings faced with equally complex personal relationships.

CONCLUSION

The petition for writ of certiorari should be granted so that the Court can determine whether a mother and child deserve the same level of legal dignity accorded to commercial interests.

Respectfully submitted,

CHARLES MICHAEL ARON
Attorney for Petitioner

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1998

April 15, 1998

JODI GOODWIN, individually and as next friend of BETTY JO GOODWIN, a minor,	)	
Appellants (Plaintiffs),	)	No. 97-214
v.	)	
RANDY HALL,	)	
Appellee (Defendant).	)	

Appeal from the District Court of Albany County
Honorable Jeffrey A. Donnell, Judge

Representing Appellant:

C.M. Aron and K. Karla Tull of Aron and Hennig, Laramie, Wyoming.

Representing Appellee:

Kathleen A. Hunt, Laramie, Wyoming.

Before TAYLOR, C.J., and THOMAS, MACY, GOLDEN and LEHMAN, JJ.

Golden, Justice.

Jodi Goodwin (Goodwin) appeals from the district court's order dismissing her complaint against Randy Hall (Hall) for lack of *in personam* jurisdiction. We affirm.

ISSUES

Appellant Goodwin presents the following issues for our review:

> Whether the constitutional standard of *in personam* jurisdiction over a non-resident committing a commercial tort applies equally to a non-resident who commits a personal tort.
>
> Whether the level of minimum contacts required to assert *in personam* jurisdiction in a commercial case is sufficient in a case affecting individual rights.
>
> Whether an individual as a private person is entitled to the same constitutional jurisdiction standards as would apply to the same individual as a consumer.
>
> Whether a Wyoming court has personal jurisdiction over an Idaho resident whose conduct in Idaho is intended to interfere with the rights of a Wyoming resident mother and child.

Appellee Hall states the following issue in his brief:

> The sole issue before this Court is whether the Trial Court properly concluded that the Defendant-Appellee Randy Hall, a resident of the State of Idaho, lacked sufficient minimum contacts so as not to be properly subject to *in personam* jurisdiction in the State of Wyoming.

FACTS

Goodwin filed her complaint individually, and as next friend of the parties' daughter, on January 13, 1997, in the Second Judicial District, Albany County, Wyoming.

The complaint alleged claims for damages for abuse of process, intentional infliction of emotional distress and baseless pleading. The district court dismissed the complaint on motion before any facts outside the pleadings were introduced. Therefore, the only relevant facts are those alleged in the complaint. *Darrar v. Bourke*, 910 P.2d 572, 575 (Wyo. 1996).

This case arises from a paternity and child custody dispute between Goodwin and Hall and concerns the parties' daughter. Goodwin and her daughter are residents of Wyoming. Hall, the biological father, is a resident of Idaho. While his daughter was visiting Hall's parents in Idaho, Hall filed a paternity action in Idaho on January 13, 1995. The affidavit Hall filed in the action contained false statements concerning Goodwin's care and custody of her daughter, and Hall obtained a temporary order which required the daughter to remain in Idaho. Goodwin appeared in Idaho, and the temporary order was dissolved. Hall dismissed his paternity action and filed a second paternity action in Idaho, again filing a misleading affidavit. Hall obtained another temporary order requiring his daughter to remain in Idaho. The daughter was returned to Goodwin's custody once again.

Numerous hearings were held in Idaho, and Goodwin was required to travel to Idaho on several occasions and incur significant legal fees to maintain custody of her daughter. Hall had Goodwin served in Wyoming for both paternity actions. Goodwin filed a parallel custody action in Wyoming, styled as a petition to establish paternity and award child custody and support, or, in the alternative to terminate Hall's parental rights. Pursuant to the Uniform Child Custody Jurisdiction Act, the Wyoming

and Idaho courts determined that custody should be determined by the Wyoming court. The Idaho court apparently retained jurisdiction over child support issues. Hall subjected himself to the jurisdiction of the Wyoming court solely for the purpose of determining the custody of his daughter.

In addition to the allegations of damages for abuse of process, intentional infliction of emotional distress and baseless pleading, Goodwin's complaint also alleged that, as a result of Hall's actions, Goodwin lost wages and incurred expenses for attorney's fees and transportation to Boise, Idaho. All of Goodwin's claims arise out of Hall's actions when he filed his two Idaho paternity actions and the alleged false and misleading affidavits filed in connection with those actions.

Hall filed a motion to dismiss, challenging the jurisdiction of the Wyoming district court pursuant to United States and Wyoming constitutional, statutory and case law. After considering the briefs of the parties and the arguments of counsel, the district court determined it lacked personal jurisdiction over Hall in the matter and granted Hall's motion to dismiss. Goodwin filed a timely notice of appeal.

DISCUSSION

The issue of *in personam* jurisdiction, if disputed, must be resolved before a case may proceed. *O'Bryan v. McDonald*, 952 P.2d 636, 638 (Wyo.1998). When the district court holds an evidentiary hearing on the merits of a motion to dismiss alleging lack of *in personam* jurisdiction, the plaintiff must demonstrate personal jurisdiction

is proper by a preponderance of the evidence. *Id.* The ultimate question of whether personal jurisdiction may properly be exercised is a question of law, which we review *de novo. Id.* In its decision letter the district court, accepting the facts alleged in the complaint as true and viewing the allegations in the light most favorable to the plaintiff, determined it did not have personal jurisdiction over Hall as a matter of law.

Wyoming courts are authorized to exercise personal jurisdiction over a defendant on any basis which is not inconsistent with the Wyoming or United States constitutions. WYO. STAT. § 5-1-107(a) (1997). The due process clause found in the Fourteenth Amendment of the United States Constitution limits the jurisdiction of state courts over the person of nonresident defendants. *O'Bryan*, 952 P.2d at 638. Generally, due process requires that a defendant have contacts with the state such that exercise of jurisdiction does not offend " 'traditional notions of fair play and substantial justice.' " *Id.* at 639 (quoting *Markby v. St. Anthony Hosp. Sys.*, 647 P.2d 1068, 1071 (Wyo. 1982), which quotes *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945)). We have held that the defendant must have at least minimum contacts with the forum state to satisfy the due process standard. *Markby*, 647 P.2d at 1072-73.

In her brief, Goodwin summarizes her position and urges us to apply a two-step jurisdictional analysis to her situation. She suggests that we adopt a position that "[w]ith respect to all matters relative to his or her child, a parent is subject to personal jurisdiction in the state where the child resides." We have recently had occasion to examine this issue in a similar case, *O'Bryan v.*

McDonald, 952 P.2d 636 (Wyo. 1998). In *O'Bryan* we declined to find the father purposefully availed himself of the privilege of acting in Wyoming by voluntarily entering into a contract concerning child support and partially performing that contract in the state. *Id.* at 640. Finding solace in both our own and the United States Supreme Court's time-honored three-step analysis of *in personam* jurisdiction questions, we will decline to follow Goodwin's recommendation and decline to find personal jurisdiction in this case as well.

No issue of general jurisdiction of Wyoming courts with respect to Hall is present in this case. Goodwin does not allege "continuous and systematic" contact by Hall with the State of Wyoming. In *O'Bryan*, we reiterated our long-standing three-part test which defines the outer limits of personal jurisdiction based on a single act:

> 1) the defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state, 2) the cause of action must arise from the consequences in the forum state of the defendant's activities, and 3) the activities of the defendant or the consequences of those activities must have a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable.

O'Bryan, 952 P.2d at 639 (citing *Amoco Prod. Co. v. EM Nominee Partnership Co.*, 886 P.2d 265, 267 (Wyo. 1994)); *see also First Wyoming Bank, N.A., Rawlins v. Trans Mountain Sales and Leasing, Inc.*, 602 P.2d 1219, 1221 (Wyo. 1979).

Purposeful availment is a threshold requirement meant to ensure " 'that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts.' " *O'Bryan*, 952 P.2d at 639 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985)). Unless the purposeful availment requirement is satisfied, the court will not have personal jurisdiction over the nonresident "no matter how strong the interest of the plaintiff or the forum state may be in having the suit adjudicated there." *O'Bryan*, 952 P.2d at 639 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294, 100 S. Ct. 559, 565-66 (1980)); 1 Robert C. Casad, Jurisdiction in Civil Actions § 2.05 (2d ed. 1991)).

Goodwin claims that Hall purposefully availed himself of the privilege of acting in Wyoming or caused important consequences in Wyoming by the service of process in the state pursuant to Idaho law. However, Goodwin presents no authority that service of process within one state to obtain appearance in a suit brought in another state constitutes purposeful availment. We agree with the determination of the district court that Hall did not avail himself of Wyoming law in order to accomplish service of process. Similarly, when Hall submitted to the jurisdiction of the Wyoming court for purposes of determining custody of the child pursuant to an interstate agreement, he did not "purposefully avail" himself of the privilege of acting in Wyoming.

While we cannot deny that Hall's actions had significant consequences for a Wyoming resident and her child, we agree with the district court's finding that Hall's actions also had significant consequences in Idaho, "for it was Idaho's legal process and Idaho's courts that were

subverted by Hall's actions." Finally, we are also in accord with the district court's opinion that "the Idaho courts should have the opportunity to address [Hall's] alleged actions and to deal appropriately with them." The district court considered the other prongs of the test for personal jurisdiction and determined it lacked personal jurisdiction over Hall in this matter. However, because the threshold "purposeful availment" requirement is not satisfied in this case, we need not consider the remaining jurisdictional requirements.

CONCLUSION

Goodwin failed to establish that Hall had sufficient contacts with Wyoming to require him to come to Wyoming to defend her claims against him. Therefore, the district court's order dismissing the case for lack of personal jurisdiction is affirmed.

STATE OF WYOMING)		IN THE DISTRICT COURT
	) ss.	SECOND JUDICIAL
COUNTY OF ALBANY)		DISTRICT
		CIVIL ACTION
		NO. 25868

JODI GOODWIN,
Plaintiff,
vs.
RANDY HALL,
Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER having come before the Court on Defendant's Motion to Dismiss, and the Court having considered the briefs and having heard the arguments of counsel;

Based upon the reasons stated in the Court's June 12, 1997 Decision Letter, which is incorporated herein by this reference,

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss with prejudice be granted on the basis that this Court lacks personal jurisdiction over the Defendant Randy Hall in this matter, and this matter is hereby dismissed with prejudice.

SO ORDERED this 23rd day of June, 1997.

BY THE COURT:

/s/ Jeffrey A. Donnell
JEFFREY A. DONNELL
District Judge

Approved as to form & copies to:

/s/ Kathleen A. Hunt
Kathleen A. Hunt

/s/ C.M. Aron
C.M. Aron

THE STATE OF WYOMING
SECOND JUDICIAL DISTRICT

(SEAL)

JEFFREY A. DONNELL
DISTRICT JUDGE

ALBANY COUNTY
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DECISION LETTER

June 12, 1997

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Re: *Goodwin, et al. v. Hall*
Albany County Civil Action No. 25868

Dear Counsel:

The above-entitled matter comes before the Court on Defendant's Motion to Dismiss for lack of jurisdiction. Having considered the briefs of the parties and the arguments of counsel, the Court concludes that Defendant's motion should be granted.

FACTS

This case arises from a paternity/child custody dispute between the parties. Plaintiff alleges that the battle was originally joined in Idaho when Defendant filed false affidavits and other documents in an attempt to "steal" his child from her residence in Wyoming. Defendant had

not then been adjudicated the child's father. Defendant's original Idaho action was dismissed and a second action filed in which Defendant again allegedly filed false or misleading affidavits. The child was physically present in Idaho when both of these actions were filed, and both resulted in temporary orders requiring the child remain in Idaho. None of these matters had anything to do with Wyoming except that the child resided in Wyoming and service of Idaho process was made in Wyoming pursuant to Idaho law.

Numerous hearings were held in Idaho, and Plaintiff was compelled to travel to Idaho on several occasions and incur significant legal fees. A parallel custody action was also filed in Wyoming and, pursuant to the Uniform Child Custody Jurisdiction Act, the Wyoming and Idaho courts determined that custody should be determined by the Wyoming Court. The Idaho court apparently retained jurisdiction with respect to child support issues. Pursuant to that decision, Defendant participated in the Wyoming proceedings for the purpose of determining the child's custody.

Plaintiff now brings her separate action alleging, in essence, damage claims for abuse of process, intentional infliction of emotional harm and baseless pleading. All of her claims arise out of Defendant's actions in filing his two Idaho actions and the false and/or misleading affidavits in connection therewith. Defendant moves to dismiss on the grounds that this Court lacks personal jurisdiction over Defendant.

Standard of Review

This motion is made pursuant to Rule 12 of the Wyoming Rules of Civil Procedure. In considering a motion to dismiss for lack of personal jurisdiction under Rule 12(b), **"the 'facts alleged in the complaint are admitted and the allegations must be viewed in the light most favorable to the plaintiffs.' Dismissal is a drastic remedy and is sparingly granted."** *Darrar v. Bourke*, 910 P.2d 572, 575 (Wyo. 1996), quoting *Cranston v. Weston County Weed & Pest Board*, 826 P.2d 251, 254-5 (Wyo. 1992); *Matter of Paternity of JRW*, 814 P.2d 1256, 1259 (Wyo. 1991). The court must determine whether it appears beyond a reasonable doubt that no set of facts in support of the Plaintiff's claim would entitle her to relief. *Id.* citing *Torrey v. Twiford*, 713 P.2d 1160, 1161 (Wyo. 1986).

Discussion

Wyoming courts are authorized pursuant to W.S. §5-1-107 to exercise personal jurisdiction over a defendant on any basis which is not inconsistent with the Wyoming or United States constitutions. Of course, the exercise of such jurisdiction must be consistent with the Due Process Clause of the United States Constitution.

Due Process requires generally that a defendant have minimum contacts with the state such that the exercise of jurisdiction does not offend **"traditional notions of fair play and substantial justice."** *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Where such contacts are continuous and systematic, the court has general jurisdiction and may litigate matters occurring *outside* the

forum state. If a claim arises within the forum state, specific jurisdiction exists where the defendant has "purposefully avail[ed himself] of the privilege of conducting activities within the forum state. . . . " *Dobbs v. Chevron U.S.A.*, 39 F.3d 1064 (10th Cir. 1994).

The Wyoming Supreme Court has also proffered its rule on this issue. In *First Wyoming Bank, N.A., Rawlins v. Trans Mountain Sales and Leasing, Inc.*, 602 P.2d 1219, 1221 (Wyo. 1979), the Court stated:

> **"First, the defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. Second, the cause of action must arise from the consequences in the forum state of the defendant's activities. Finally, the activities of the defendant or the consequences of those activities must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable."**

Plaintiff does not allege "continuous and systematic contact" with the State of Wyoming by Defendant, and the Court perceives no issue as to whether general jurisdiction exists with respect to Defendant here. The Court must determine, however, whether specific jurisdiction exists.

The first issue is whether the defendant purposefully availed himself of the privilege of acting in Wyoming or caused important consequences in Wyoming. Defendant's only action in Wyoming involved the service of process in the state pursuant to Idaho law. Defendant did not avail himself of Wyoming law in order to accomplish this.

Similarly, he did not *purposefully avail* himself of the privilege of acting in Wyoming when he later submitted to the jurisdiction of the Wyoming court for determination of custody pursuant to interstate agreement. That his action had significant consequences on Plaintiff in Wyoming cannot be denied and must, in fact, be assumed as true for purposes of this motion. However, the Court is of the opinion that Defendant's actions, if true, had equally significant consequences in Idaho for it was Idaho's legal process and Idaho's courts that were subverted by Defendant's actions.

Second, the court must determine if Plaintiff's action arises from the consequences in Wyoming of Defendant's actions. As noted above, Defendant's actions, the filing of the false affidavits, occurred in Idaho, and these are the actions of which Plaintiff complains. Again, his actions had definite consequences in Wyoming and equally definite consequences in Idaho. The Court is of the opinion that the Idaho courts should have the opportunity to address Defendant's alleged actions and to deal appropriately with them.

Finally, the court must determine whether the activities of the defendant or the consequences of those activities have a substantial enough connection with Wyoming to make the exercise of jurisdiction over Defendant reasonable. A number of factors enter into this decision including the availability of evidence, the burden on the Defendant, Wyoming's interest in adjudicating this dispute and providing a forum for its resident, the extent to which the cause of action arises out of activities in Wyoming and others. *Markby v. St. Anthony Hospital System*, 647 P.2d 1068, 1070 (Wyo. 1982).

Certainly it would be more convenient for Plaintiff to pursue this matter in her home town, and certain evidence may be more conveniently available to her. On the other hand, the prime actors, including Defendant, his attorney(s), and the Court files are available in Idaho. Based on the fact that the actions complained of occurred in Idaho and that the principle [sic] actors which perpetrated these actions are located in Idaho, the Court concludes that evidence is relatively more available in Idaho. Similarly, the Court concludes that it would be relatively more burdensome on Defendant to require him to produce this evidence in Wyoming.

Wyoming certainly has a significant interest in providing a forum for its residents, particularly when actions such as Defendant's may have the effect of removing youthful parties from the boundaries of the state. On the other hand, the State of Idaho has a significant interest in recognizing and protecting the integrity of its courts, and this court has no reason to believe the Plaintiff will not be provided full access to the Idaho courts for this purpose.

Finally, both of the involved states share an interest in furthering fundamental substantive social policies. As previously noted, the specific interests of the states in this case are somewhat different, but the Court is convinced that, on balance, the State of Idaho has the greater interest in preventing the misuse and abuse of its legal system and in redressing the harms allegedly caused by Defendant. For all of these reasons, the Court concludes that, while Defendant's activities certainly had consequences in the State of Wyoming, they were not so substantial as to outweigh Idaho's interests in this matter or to make the exercise of jurisdiction over Defendant reasonable.

The Court concludes, therefore, that based on an analysis of the facts set forth in Plaintiff's Complaint and the three part test set out in *First Wyoming Bank*, it lacks personal jurisdiction over Defendant in this matter and his motion should be granted. I would ask Ms. Hunt prepare an order in conformity herewith, submit it to Mr. Aron for approval as to form and to the Court for signature and entry.

Sincerely,

/s/ Jeffrey A. Donnell
Jeffrey A. Donnell
District Judge

JAD/ss

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SUPREME COURT, U.S.

No. 98-125

In The

Supreme Court of the United States

October Term, 1997

JODI GOODWIN, Individually and as next friend of BETTY JO GOODWIN, a minor,

Petitioner,

v.

RANDY HALL,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Wyoming

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Wyoming Supreme Court properly hold that Respondent Randy Hall, a resident of the State of Idaho, lacked sufficient minimum contacts so as to not be properly subject to *in personam* jurisdiction in the State of Wyoming for litigation filed by Petitioner seeking damages for the alleged tortious interference with her maternal rights, which tort is asserted to have been committed by Respondent when he filed a paternity action in the State of Idaho?

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STATEMENT OF THE CASE

A. Procedural History

Petitioner Jodi Goodwin filed a civil complaint individually and purporting to act as the next friend of the parties' minor daughter, Betty Jo Goodwin, on January 13, 1997, in the Second Judicial District, Albany County, Wyoming. She asserted claims for damages for abuse of process, intentional infliction of emotional distress and baseless pleading based upon a paternity and child custody action filed by Respondent Randy Hall in Idaho on January 13, 1995.

Respondent Hall filed a motion to dismiss, challenging the jurisdiction of the Wyoming district court pursuant to United States and Wyoming constitutional, statutory and case law. After considering the briefs of the parties as well as the oral arguments of counsel, the district court determined it lacked personal jurisdiction over Hall in the matter and granted the motion to dismiss.

Petitioner Goodwin filed an appeal of that decision to the Wyoming Supreme Court. After review of the briefs filed by counsel for Petitioner and Respondent, the Wyoming Supreme Court refused to adopt a new standard of jurisdictional analysis in child custody dispute matters. (Petitioner had suggested that the Wyoming court adopt a position that "[w]ith respect to all matters relative to his

or her child, a parent is subject to personal jurisdiction in the state where the child resides." Pet. at App. 5.[1])

Contrary to Petitioner's recital in the Petition for Writ of Certiorari, the Wyoming Supreme Court did not apply an improper balancing test in analyzing the jurisdictional issue. Instead, "finding solace in both our own and the United States Supreme Court's time-honored three-step analysis of *in personam* jurisdiction questions", it declined to adopt a new approach for parental disputes. Pet. at App. 6.

It was noted that no issue of general jurisdiction of Wyoming courts with respect to Respondent Hall was present in this case. Pet. at App. 6. The court then reiterated Wyoming's long-standing three-part test that establishes the boundaries of personal jurisdiction *based upon a single act*: 1) the defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state, 2) the cause of action must arise from the consequences in the forum state of the defendant's activities, and 3) the activities of the defendant or the consequences of those activities must have a substantial enough connection with the forum state to make the exercise of jurisdiction reasonable. Pet. at App. 6. The court noted that the purposeful availment criteria is threshold to a finding of jurisdiction in order to ensure that a defendant will not be haled into a jurisdiction solely as a result of "random", "fortuitous", or "attenuated" contacts, citing *Burger King Corp. v.*

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[1] Throughout this brief, "Pet." refers to the Petition for Writ of Certiorari and "App." refers to the appendix in the Petition.

Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985). Pet. at App. 7.

The Wyoming Supreme Court stated accurately that unless the purposeful availment requirement is satisfied, the court will not have personal jurisdiction over the nonresident "no matter how strong the interest of the plaintiff or the forum state may be in having the suit adjudicated there" citing this Court's holding in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294, 100 S.Ct. 559, 565-66 (1980). Pet. at App. 7.

The Wyoming Supreme Court held that the facts alleged by Petitioner did not establish that Respondent Hall had purposefully availed himself of the privilege of acting in Wyoming. Pet. at App. 7. The court stated that Petitioner Goodwin failed to establish that Respondent Hall had sufficient contacts with Wyoming to require him to come to Wyoming to defend her claims against him. It noted that Petitioner could file her action against Respondent in Idaho and find relief there. Therefore, the district court's order dismissing the case for lack of personal jurisdiction was affirmed. Pet. at App. 8.

B. The Underlying Dispute

This is a case of unrelenting parental discord and unrequited animosity. It arises from a paternity/child custody fight these parents waged for several years in both Idaho and Wyoming. The critical allegation is as follows: an abuse of process committed by Respondent Hall in the State of Idaho was effectuated by the filing of

a false affidavit before an Idaho magistrate and a misleading affidavit, "false by its omissions" before a different Idaho magistrate, in paternity actions filed by Mr. Hall in Idaho.

The parties' minor child was conceived and born in Idaho. She had been moved continuously by Petitioner in her short life, living for a time with Mr. Hall's parents in Idaho. She had also resided in Wyoming for approximately one year prior to her being given by the Petitioner to the child's paternal grandmother (Mr. Hall's mother) to live in Idaho in 1994. Six months later, Mr. Hall filed a paternity action in Idaho to establish his parental rights. He sought temporary custody of the child in that action. Pursuant to Idaho law, Mr. Hall effectuated service of process of the Idaho action upon the Petitioner in Wyoming. (The parties subsequently stipulated to Mr. Hall's paternity of the child, and custody and visitation rights have now been established as well.) *The service of process is the only action alleged to have occurred in the State of Wyoming. All other wrongful actions of which the Petitioner complained occurred in the State of Idaho.*

REASONS TO DENY THE WRIT

A. The Supreme Court of the State of Wyoming has not decided an important federal question in a way that conflicts with any decision of another state supreme court or of a United States court of appeals.

Pursuant to Supreme Court Rule 10(b), one of the circumstances that may warrant the granting of a petition

for writ of certiorari is where a state court of last resort has decided an important federal question contrary to another state's decision or that of a federal court of appeals. Petitioner has failed to show that this particular portion of the rule is applicable in the instant case. She cites no cases in which any court anywhere in the country has adopted her proposed new standard of personal jurisdiction for parental feuds.

B. The question presented in the Petition does not implicate an important question of federal law that has not been, but should be, settled by this Court.

The Wyoming Supreme Court correctly applied the federal standard as to a state court's assertion of *in personam* jurisdiction over a nonresident: the defendant must have at least minimum contacts with the forum state to satisfy the due process standard. Pet. at App. 5.

It is clear the United States Supreme Court has over the years kept its eye squarely upon the purpose behind the limits of the due process clause on state court jurisdiction over nonresidents.

> Since *Pennoyer v. Neff*, 95 U.S. 714, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. . . . Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is

> attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 222-223 (1957).

Not long after the *McGee* case, the Court, in *Hanson v. Denckla*, 357 U.S. 235 (1958), reminded us that despite the nationalistic trends of this century, there are still viable limits on a state court's power to exercise personal jurisdiction over nonresidents:

> But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. [Citations omitted.] Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limits on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him. 357 U.S. at 250-251.

Petitioner attempts to invoke the sympathy of the Court for the fact that she is a mother seeking to redress perceived wrongs to her and the parties' child and that she should be accorded at least as much protection as

those in the commercial arena. Her argument is misdirected. It is the Respondent, the defendant hereinbelow, the recipient of unwanted litigation, whose due process rights are to be protected. In this case, Respondent Hall did not place himself in the stream of interstate commerce thus knowingly exposing himself for purposes of acquiring commercial gain to the risks of interstate commercial litigation. He acted as an individual, a father seeking to establish his paternal rights. His behavior and his right to due process protection should be adjudged on that basis, not as a multi-state player in the business arena.

In its decision below, the Wyoming Supreme Court carefully analyzed the first element of the three-prong test, recited at page 3 of this Brief, established in *First Wyoming National Bank, N.A. Rawlins v. Trans Mountain Sales and Leasing, Inc.*, 602 P.2d 1219 (Wyo. 1979): whether the Respondent had purposefully availed himself of the privilege of acting in Wyoming by virtue of the sole and isolated action of serving process of an Idaho paternity petition upon Petitioner in Wyoming. As the Wyoming court noted, Petitioner presented no authority that service of process within one state to obtain appearance in a suit brought in another state constitutes purposeful availment. Pet. at App. 7. Nor does Petitioner cite any such authority herein.

The purposeful availment requirement is not something that should be abandoned by this Court, no matter how strong the purported interest of a plaintiff. To do so would wipe out years of established due process protection for the citizens of this country. The importance of such a departure should not be measured by its impact

upon these litigants, but its impact upon the rights of all persons under the U.S. Constitution.

It is proposed by the Petitioner that based upon the mere fact that she is a resident of Wyoming and considers her maternal rights to have been assailed, a new rule must emerge for this special circumstance: where the State of Wyoming is the residence of any minor child, both parents are thus subject to *in personam* jurisdiction by the Wyoming courts and monetary and punitive damage awards may be entered by the courts of Wyoming against nonresident parents, not simply for support obligations, but for any sort of tortious conduct one parent perceives the other has rendered, not just to the child, but to that offended parent. Surely, there is not such a glut of parental interference and tort cases based upon parental wrongs waiting for redress that a new rule should be established discarding long-standing precepts of due process protection, lowering the threshold of jurisdiction and inviting protracted parental legal bashing. Such a national approach cannot be in the best interests of the unfortunate children caught in the middle.

CONCLUSION

The bare fact of injury to a resident has never been sufficient to empower the courts of a state to exercise jurisdiction over a nonresident. Despite Petitioner's importunities, considerations of due process must still be the final determinant of the exercise of such jurisdiction.

Sound judicial policy will not abandon the constitutionally imposed limitations followed for so many years by our legal system.

The due process clause does not allow a state to make binding a judgment *in personam* against an individual defendant with whom the state has no contacts, ties or relations. Even if the Respondent would suffer minimal inconvenience from being forced to litigate before the courts of the State of Wyoming, even if Wyoming has a strong interest in applying its law to the controversy, even if Wyoming is the most convenient location for litigation for Petitioner, the due process clause, acting as an instrument of interstate federalism, will, in the appropriate case, act to divest the state of its power to render a valid judgment. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). This is such a case, and the Petition for Writ of Certiorari to the Supreme Court of Wyoming should be denied.

Respectfully submitted,

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